

### **REMARKS**

Claims 1-24 are pending of which claims 1-18 are rejected and claims 19-24 are withdrawn from consideration. Claims 1, 7, 14 and 16 are independent.

Claim 7 is rejected under 35 U.S.C. §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Knudson et al. (U.S. Patent No. 6,016,141, hereinafter Knudson) in view of Brown (U.S. Patent No. 5,771,435, hereinafter Brown) and Hamlin (U.S. Patent No. 6,477,504, hereinafter Hamlin).

Claims 7-9, 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Knudson in view Billock et al. (U.S. Patent No. 6,314,575, hereinafter Billock).

Claims 10 and 11 are rejected under 35 U.S.C. §103(a) as being unpatentable over Knudson, in view of Billock, Hamlin and Goode et al. (International Pub. No. 98/19459, hereinafter Goode).

Claims 14-18 are rejected under 35 U.S.C. §103(a) as being unpatentable over Knudson, in view of Goode and Hamlin.

Each of the various rejections and objections are overcome by amendments that are made to the specification, drawing, and/or claims, as well as, or in the alternative, by various arguments that are presented.

Any amendments to any claim for reasons other than as expressly recited herein as being for the purpose of distinguishing such claim from known prior art are not being made with an intent to change in any way the literal scope of such claims or the range of equivalents for such claims. They are being made simply to present language that is better in conformance with the form requirements of Title 35 of the United States Code or is simply clearer and easier to understand than the originally presented language. Any amendments to any claim expressly made in order to distinguish such claim from known prior art are being made only with an intent to change the literal scope of such claim in the most minimal way, i.e., to just avoid the prior art in a way that leaves the claim novel and not obvious in view of the cited prior art, and no equivalent of any subject matter remaining in the claim is intended to be surrendered.

Also, since a dependent claim inherently includes the recitations of the claim or chain of claims from which it depends, it is submitted that the scope and content of any dependent claims

that have been herein rewritten in independent form is exactly the same as the scope and content of those claims prior to having been rewritten in independent form. That is, although by convention such rewritten claims are labeled herein as having been "amended," it is submitted that only the format, and not the content, of these claims has been changed. This is true whether a dependent claim has been rewritten to expressly include the limitations of those claims on which it formerly depended or whether an independent claim has been rewritten to include the limitations of claims that previously depended from it. Thus, by such rewriting no equivalent of any subject matter of the original dependent claim is intended to be surrendered. If the Examiner is of a different view, he is respectfully requested to so indicate.

**Rejection Under 35 U.S.C. §112**

Claim 7 is rejected under 35 U.S.C. §112, ¶2, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 is amended as suggested by the Examiner.

As such, Applicants respectfully submit that claim 7 is allowable under 35 U.S.C. 112. Therefore, the rejection should be withdrawn.

**Rejection Under 35 U.S.C. §103(a)**

The Examiner bears the initial burden of establishing a prima facie case of obviousness. See MPEP § 2141. Establishing a prima facie case of obviousness begins with first resolving the factual inquiries of *Graham v. John Deere Co.* 383 U.S. 1 (1966). The factual inquiries are as follows:

- (A) determining the scope and content of the prior art;
- (B) ascertaining the differences between the claimed invention and the prior art;
- (C) resolving the level of ordinary skill in the art; and
- (D) considering any objective indicia of nonobviousness.

Once the *Graham* factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. The key to supporting a rejection under 35 U.S.C. §103 is the clear articulation of the reasons why the claimed invention would have been obvious. The analysis supporting such a rejection must be explicit. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory

statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." In re Kahn, 441 F. 3d 977, 988 (CA Fed. 2006), cited with approval in KSR Int'l Co. v. Teleflex, Inc., 126 S. Ct. 2965 (2006); see also MPEP §2141.

### **Claims 1-6**

Claims 1-6 are rejected under 35 U.S.C. §103(a) as being unpatentable over Knudson in view of Brown and Hamlin. The rejection is traversed.

Claim 1 is amended to recite in part "wherein said programming packages comprise a hierarchical structure, which may be multi-tiered or grouped." which is not disclosed or fairly suggested by Knudson, Brown and Hamlin, alone or in combination.

In general, Knudson discloses communications paths preferably have sufficient bandwidth to allow television distribution facility to distribute scheduled television programming, and other video information to user equipment in addition to program data. If desired, program data may be distributed by one or more distribution facilities that are similar to but separate from television distribution facility using different or separate communications paths. Certain functions such as pay program purchasing may require user equipment to transmit data to distribution facility over available communications paths. If desired, such data may be transmitted over telephone lines or other separate communications paths. See col. 3, lines 45-57.

Knudson, however, fails to teach or suggest at least the limitation of "wherein said programming packages comprise a hierarchical structure, which may be multi-tiered or grouped." as claimed in Applicants' amended claim 1.

Brown is devoid of any teaching or suggestion of the aforementioned limitation as recited in amended independent claim 1.

Hamlin fails to bridge the substantial gap between Knudson and Brown and Applicants' invention of amended independent claim 1.

Therefore, Applicants respectfully submit that claim 1 is allowable over Knudson in view of Brown and Hamlin under 35 U.S.C. §103. Furthermore, since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Knudson in view of Brown and Hamlin under 35 U.S.C. §103.

As such, Applicants respectfully submit that claims 1-6 are allowable over Knudson in view of Brown and Hamlin under 35 U.S.C. §103. Therefore, the rejection should be withdrawn.

**Claims 7-9, 12 and 13**

Claims 7-9, 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over Knudson in view of Billock and Hamlin. The rejection is traversed.

Knudson, Billock and Hamlin, alone or in combination, fail to teach or suggest all elements of amended independent claim 7.

As discussed above, in general, Knudson discloses a system that allows a user to select a pay program for purchase from a program guide. The program guide determines whether the selected program is part of a package of pay programs. If the selected program is part of a package, information regarding the package is provided to the user so that the user may decide whether to purchase the package. (See Abstract).

Knudson, however, fails to teach or suggest at least the limitations of “comprising a hierarchical structure, which may be multi-tiered or grouped,” (emphasis added).

Furthermore, claim 7 recites nine (9) limitations and the Examiner failed to address each and every limitation of claim 7 with a degree of clarity allowing the Applicants to ascertain the veracity of the Examiner’s assertion. Rather, the Examiner lumped the first five (5) limitations together and addressed them as if they were one limitation. Consequently, Applicants are unable to articulate further arguments other than provided above in support of the patentability of the features of claim 7.

Billock and Hamlin fail to bridge the substantial gap between Knudson and Applicants’ invention of claim 7.

Therefore, Applicants respectfully submit that claim 7 is allowable over Knudson in view of Billock and Hamlin under 35 U.S.C. 103. Furthermore, since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Knudson in view of Billock and Hamlin under 35 U.S.C. 103.

As such, Applicants respectfully submit that claims 7-13 are allowable over Knudson in view of Billock and Hamlin under 35 U.S.C. 103. Therefore, the rejection should be withdrawn.

**Claims 10 and 11**

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson, in view of Billock, Hamlin and Goode.

Each ground of rejection applies only to dependent claims, and each is predicated on the validity of the rejection under 35 U.S.C. 103 given Knudson in view of Billock and Hamlin. Since the rejection under 35 U.S.C. 103 given Knudson in view of Billock and Hamlin has been overcome, as described hereinabove, and there is no argument put forth by the Office Action that Goode supplies that which is missing from Knudson in view of Billock and Hamlin to render the amended independent claims obvious, these grounds of rejection cannot be maintained..

As such, Applicants respectfully submit that claims 10 and 11 are allowable over Knudson in view of Billock, Hamlin and Goode under 35 U.S.C. 103. Therefore, the rejection should be withdrawn.

**Claims 14-18**

Claims 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knudson in view of Goode and Hamlin. The rejection is traversed.

Knudson, Goode and Hamlin, alone or in combination, fail to teach or suggest all elements of independent claim 14.

As discussed above, in general, Knudson discloses communications paths preferably have sufficient bandwidth to allow television distribution facility to distribute scheduled television programming, and other video information to user equipment in addition to program data. If desired, program data may be distributed by one or more distribution facilities that are similar to but separate from television distribution facility using different or separate communications paths.

Knudson, however, fails to teach or suggest at least the limitation of “comprising a hierarchical structure, which may be multi-tiered or grouped,” as claimed in Applicants’ amended independent claim 14.

Good and Hamlin fail to bridge the substantial gap between Applicants’ invention of claim 14 and Knudson.

Goode is devoid of any teaching or suggestion of Applicants' aforementioned claimed limitation. Neither Knudson nor Goode alone or combined teach or fairly suggest allowing the subscriber to interface with menu applets.

Hamlin fails to bridge the substantial gap between Applicants' claimed features and Knudson and Goode alone or combined.

Therefore, Applicants respectfully submit that claim 14 is allowable over Knudson in view of Goode and Hamlin under 35 U.S.C. §103.

Claim 16 recites relevant limitations similar to those recited in claim 14 and, as such, for at least the same reasons discussed above, claim 16 is allowable over Knudson in view of Goode and Hamlin under 35 U.S.C. §103. Specifically, claim 16 recites in part "comprising a hierarchical structure, which may be multi-tiered or grouped," which is not disclosed or fairly suggested by Knudson alone or combined with Goode. Therefore, Applicants respectfully submit that claim 16 is allowable over Knudson in view of Goode and Hamlin under 35 U.S.C. 103.

Furthermore, since all of the dependent claims that depend from the independent claims include all the limitations of the respective independent claim from which they ultimately depend, each such dependent claim is also allowable over Knudson in view of Goode and Hamlin under 35 U.S.C. 103.

As such, Applicants respectfully submit that claims 14-18 are allowable over Knudson in view of Goode and Hamlin under 35 U.S.C. 103. Therefore, the rejection should be withdrawn.


**CONCLUSION**

It is respectfully submitted that the Office Action's rejections have been overcome and that this application is now in condition for allowance. Reconsideration and allowance are, therefore, respectfully solicited.

If, however, the Examiner still believes that there are unresolved issues, the Examiner is invited to call Eamon J. Wall or Emmanuel Coffy at (732) 842-8110 so that arrangements may be made to discuss and resolve any such issues.

Respectfully submitted,

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